



WORKING TO MAKE A DIFFERENCE

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Update 2006 – 2

**TO: HOLDERS OF THE *REHABILITATION SERVICES & CLAIMS MANUAL* –
VOLUME I**

This update of the *Rehabilitation Services & Claims Manual* contains amendments to the *Manual* implemented since update 2006 – 1.

This update includes amendments to policy item #50.00, *Interest*, to provide for interest payments under section 17 benefits to the surviving dependants of deceased workers in cases of blatant Board error. The amendment becomes effective **March 1, 2006**.

A summary of the amendments is attached and the amended pages are included as part of the package.

If you have any questions regarding subscription information for updates to the *Rehabilitation Services & Claims Manual*, please call WorkSafeBC Customer Service at the following:

Local phone: 604-232-9704
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Roberta Ellis
Vice-President
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Attachments

March 2006

Rehabilitation Services & Claims Manual, Volume I

SUMMARY OF AMENDMENTS – Update 2006 – 2

Chapter 7	Pages 19 – 25	Policy item #50.00, <i>Interest</i> Policy amendment to provide for interest payments on section 17 benefits to the surviving dependants of deceased workers in cases of blatant Board error.
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worker's wife, husband or children, or to a trustee appointed by the Board to expend for the benefit of the worker, the worker's wife, husband or children. If not redirected, these benefits are permanently lost during the period of incarceration; however, the worker will be entitled, during the period of confinement, to the Section 23(1) award the worker would have been granted had there been no Section 23(3) consideration.

Confinement under Section 98(3) only includes those circumstances where the worker is prevented from seeking or obtaining employment for regular wages under an employee/employer relationship. Thus, ongoing entitlement to benefits will be determined once the worker is released on day parole and is no longer considered to be "confined" to jail or prison.

When an incarcerated worker whose benefits have been cancelled, suspended or withheld becomes eligible to participate in a work release program, but is unable to do so because of the effects of a work caused disability accepted under the claim, compensation benefits may be reinstated from that point.

The power to redirect payments to dependants is exercised if the worker was supporting the worker's wife, husband or children prior to the imprisonment. All, or a portion of the compensation, is paid to them or a trustee, the amount depending on the number of dependants and their needs. If the worker was not supporting them, the power is not exercised unless there is a court order against the worker, in which case the amount provided for in the order will be paid. The power to pay the compensation to a trustee for the benefit of the worker depends on the reasonable needs of the worker while incarcerated.

#49.30 PAYMENT OF PUBLIC TRUSTEE AND COMMITTEE FEES

The Board pays the fees charged to a worker by the Public Trustee or Committee for managing the worker's entire estate when the following conditions are met:

1. The worker is incapable of managing his or her own affairs and the Public Trustee or Committee administers the worker's estate;
2. The worker's incapacity to manage his or her own affairs results from a compensable injury or disease; and
3. The Public Trustee or Committee is appointed to manage the worker's affairs under the *Patients Property Act* or the *Public Trustee Act*, or equivalent statute.

The Board will pay the Public Trustee and Committee fees in accordance with the fee schedule established by the Public Trustee. Fees may include the

account review fee paid to the Public Trustee by Committees and the accountant's fees for preparing the account summaries.

The Board will pay the Committee fees after the Public Trustee has approved the accounts.

#50.00 INTEREST

With respect to compensation matters, the *Act* provides express entitlement to interest only in the situations covered by sections 19(2)(c) and 258. In these situations, the Board will pay interest as provided for in the *Act* (see policy items #55.62 and #100.83).

The Board has discretion to pay interest in situations other than those expressly provided for in the *Act*. In these situations, interest may be paid subject to the following conditions:

- The retroactive payment is:
 - To a worker or employer in respect of a wage loss payment provided under sections 29 and 30 of the *Act*.
 - To a worker or employer in respect of a permanent disability lump sum payment provided under sections 22 and 23 of the *Act*.
 - To a dependant of a deceased worker in respect of a payment provided under section 17 of the *Act*.
- It has been determined that there was a blatant Board error that necessitated the retroactive payment. For an error to be "blatant" it must be an obvious and overriding error. For example, the error must be one that had the Board officer known that he or she was making the error at the time, it would have caused the officer to change the course of reasoning and the outcome. A "blatant" error cannot be characterized as an understandable error based on misjudgment. Rather, it describes a glaring error that no reasonable person should make.
- Interest will be calculated from the first day of the month following the commencement date of the retroactive benefit and up to the end of the month preceding the decision date. Notwithstanding, in no case will interest accrue for a period greater than twenty years.

In all cases where a decision to award interest is made, the Board will pay simple interest at a rate equal to the prime lending rate of the banker to the government (i.e., the CIBC). During the first 6 months of a year interest must be calculated at the interest rate as at January 1. During the last 6 months of a year interest must be calculated at the interest rate as at July 1.

For practical reasons, certain mathematical approximations may be used in the calculations.

The rate of interest provided in this policy will also be used in the calculation of overpayments as outlined in policy item #48.42.

EFFECTIVE DATE: March 1, 2006

APPLICATION: Applies to all decisions, including appellate decisions, made on or after March 1, 2006.

#50.10 Position Prior to May 7, 1984

Prior to January 24, 1979, the Board's practice was not to pay interest at all on wage-loss or pension payments. On that date, a practice of paying interest on pension awards only was initiated which was identical to the practice set out above save in two respects. No interest was payable if the condition arose less than three years prior to the decision to make the award and the interest payable was compounded monthly at a period rate of 0.4166% on a periodic deposit formula. Effective January 1, 1980, this rate was changed to 0.50%. The three year period was shortened to one year on April 17, 1980. On April 30, 1980, it was decided that the rate of interest should be reviewed every year and be identical with the average rate of return on the Board's total investment portfolio for the preceding year. In accordance with that practice, the rate was on that date changed to 0.66%, the average return on the Board's investment portfolio in 1979. On November 26, 1981, the above rules were extended to wage-loss benefits.

#51.00 CONSUMER PRICE INDEX

Section 25(1) of the Act provides that "As of the first day of July in each year the board must determine a ratio by comparing the consumer price index for April in that year with the consumer price index for October in the preceding year; and as of each first day of January, the board must determine a similar ratio by comparing the consumer price index for October in the preceding year with the consumer price index for April in the preceding year." The ratios which the Board has determined under this provision are set out below.

Date	Ratio
July 1, 2000	1.00807175
January 1, 2001	1.01957295
July 1, 2001	1.01570681
January 1, 2002	1.00343643

If required, earlier figures may be obtained by contacting the Board.

“Consumer Price Index” means the Consumer Price Index for Canada published by Statistics Canada under the *Statistics Act* (Canada).

Prior to July 1, 1974, the *Act* provided a different method of making Consumer Price Index adjustments. (7)

Authority to approve adjustments under Section 25 has been assigned to the President.

Authority has also been assigned to the President to adjust the following amounts to reflect changes in the Consumer Price Index, using the formula set out in the applicable item of the manual:

Maximum and Minimum Disfigurement Amount	#43.20
Clothing Allowances	#79.00
Personal Care Allowances	#80.20
Independence and Home Maintenance Allowance	#81.00
Transportation Allowance	#82.20
Subsistence Allowances: (a) Meals	#83.20
(b) Non-Residence Accommodation	#83.20
Transfer of Costs	#114.11

#51.10 Existing Periodical Payments

As of July 1 and January 1 in each year, the Board must, by applying the ratio determined under #51.00, adjust all periodic payments then being paid or payable in respect of every injury or death occurring, and every disablement from occupational disease sustained, prior to six months before the date the adjustment is being made. (8)

Where periodic payments of compensation are commenced or recommenced in respect of an injury, death, or disablement from occupational disease sustained more than six months prior to the commencement or recommencement, the level of compensation is determined as if the payments had been continuously made from the date of injury, death, or disablement from occupational disease. (9) This means that if payments on a claim are commenced or recommenced more than six months after the injury, the claimant will receive the benefit of any Consumer Price Index increases occurring in the intermediary period which he or she would have received if continuously paid since the date of injury.

Where a worker in receipt of a pension dies as a result of the pensionable disability and dependant's benefits are payable, no Consumer Price Index adjustment is computed in the six-month period following the date of death.

#51.11 Reopening Claims

Where a claim is reopened on the basis of the claimant's earnings at the time of the original injury, the claimant will receive the benefit of any Consumer Price Index adjustments occurring between the injury and the reopening which would have been received if continuously paid since the date of injury. However, where the claim is reopened after three years on the basis of the claimant's earnings at the time of the reopening, the date of the reopening is treated as the date of the injury. No Consumer Price Index adjustments are applied in such a case until after six months has elapsed since the reopening. The Consumer Price Index adjustment will then apply to the next change that occurs in the ensuing six-month period. (10)

#51.12 Injury, Death or Disablement Occurring Prior to July 1, 1974

Section 25 applies regardless of the date of the injury, death, or disablement from occupational disease.

However, the requirement that six months elapse between the date of a death and the first Consumer Price Index adjustment has been limited to deaths occurring on or after July 1, 1974. The adjustment which took place on July 1, 1974, was applied in the case of deaths occurring on or after January 1, 1974, and before July 1, 1974, as well as to deaths occurring prior to January 1, 1974.

In the case of deaths prior to July 1, 1974, the Act prior to that date had since January 1, 1966 made provision for Consumer Price Index adjustment of pensions payable to dependent spouses and children. No such adjustments were applicable to pensions payable to other dependants of the deceased worker, for example, parents. (11) This meant that the pension base to which Consumer Price Index adjustments were applied on and after July 1, 1974, was smaller for such dependants than for spouses and children. This situation is remedied by Section 27 which provides that:

“Where dependants are receiving or are eligible to receive periodic payments in respect of the death of a worker occurring prior to July 1, 1974, and in respect of which payments there was no provision prior to that date for increases according to the consumer price index, those periodical payments must be adjusted as of August 1, 1975, so that after that date the periodical payments will be at the same rate as if the provisions of the Act relating to increases according to the consumer price index between January 1, 1966 and July 1, 1974 had been applicable.”

Non-resident dependants whose pensions were adjusted annually to achieve “a like degree of comfort, etc.” (12) are considered to have received Consumer Price Index adjustments and there is no need to recalculate their claims under Section 27.

#51.13 Partially Commuted Pensions

Where a worker is receiving a permanent total disability award at the statutory minimum, and there was a commutation prior to November 30, 1973, the worker receives future cost of living increases based on the full statutory minimum, less the dollar amount of the commutation. If there is, or has been, a commutation since November 30, 1973, future cost of living increases are based on the remaining pension benefits after the commutation.

#51.20 Dollar Amounts in the Workers Compensation Act

Each dollar amount mentioned in the Act in any context whatsoever is adjusted by the Board on January 1 and July 1 in each year by applying the ratio determined under #51.00, and on the Board making the adjustments, all sections containing those dollar amounts are deemed to be amended accordingly. (13) This provision does not apply to the figures referred to in #39.61, the maximum wage rate and other figures referred to in #69.00.

Section 28 provides that “There must be published in the Gazette amendments to the Act resulting from changes in the consumer price index.”

NOTES

- (1) S.98(4)
- (2) See 70:20:80 Assessment Policy Manual
- (3) S.35(4)
- (4) S.35(6)
- (5) See #49.20
- (6) See #48.30
- (7) S.18 and S.25, prior to repeal by Workmen's Compensation Amendment Act, 1974
- (8) S.25(2)
- (9) S.25(3)
- (10) See #70.20
- (11) S.18, prior to repeal by Workmen's Compensation Amendment Act, 1974
- (12) See #62.20
- (13) S.25(4)